No. 92-74

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1993

DEPARTMENT OF REVENUE OF THE STATE OF OREGON,
Petitioner,
vs.
ACF INDUSTRIES, INC., ET AL.,
Respondents.

On Writ of Certiorari To The United States Court Of Appeals For The Ninth Circuit

Brief of Amici Interstate Air Carriers In Support of Respondents

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INTEREST OF AMICI INTERSTATE AIRLINES

The question presented here is whether the commercial and industrial property that states have chosen to favor through tax "exemptions" must be taken into account in applying Congress' mandate in 49 U.S.C section 11503 ("4R Act"), prohibiting tax discrimination against interstate railroads.

Amici interstate airlines have a direct interest in this issue because Congress has also prohibited the discriminatory taxation of airlines in 49 U.S.C. section 1513(d) ("Airline Act"), as well as motor carriers in 49 U.S.C. section 11503a ("Motor Carrier

Act").[1] Although the three acts share the same purpose and much of the same language, the Airline and Motor Carrier Acts have no counterpoint to the "catch all" provision in the 4R Act, 49 U.S.C. section 11503(b)(4), at issue here. Interstate air and motor carriers, however, are equally discriminated against when states "exempt" the commercial and industrial property of favored resident businesses, but do not take account of such exemptions in the tax burden they impose on interstate carriers.

The Court recognized the importance of this issue as to airlines when it noted probable jurisdiction of an appeal in *Western Air Lines, Inc v. Board of Equalization*, 480 U.S. 123 (1987). The question there was whether "exempt" commercial and industrial property must be considered in determining the extent of assessment ratio discrimination under the Airline Act. Ultimately, *Western Air Lines* was decided on other grounds. But the importance of that question remains, and it is still unresolved.

The interstate airlines ask to be heard here because the parties and the Solicitor General have assumed the point that will govern the question as to the airlines. Because of their focus on the "catch-all" provision, all parties incorrectly assume that the definition of "commercial and industrial property" in the 4R Act—which is identical to the definition of "commercial and industrial property" in the Airline and Motor Carrier Acts—does not allow "exempt" commercial and industrial property to be considered in an assessment ratio analysis.

That question, however, was not briefed or decided in the courts below and has not been presented to this Court in the present case. It is therefore a question that the Court need not and should not decide, particularly since the interstate carriers that have the greatest interest in its resolution—interstate air and motor carriers—are not before the Court. As the airlines further show, the parties' assumption that the assessment ratio provisions of the 4R Act cannot reach the assessment ratio discrimination

[1] Amici interstate airlines appear pursuant to the written consent of the parties. Fed.S.Ct. Rule 37.3 Letters of consent are on file with the Court.

caused when other commercial and industrial property is "exempt" from taxation, is incorrect.

SUMMARY OF ARGUMENT

1. The airlines agree with the Solicitor General that Congress enacted the 4R Act to stop the discriminatory tax treatment of interstate rail carriers and to protect the national interest in a sound and viable network of interstate commerce. Congress enacted the Motor Carrier Act and then the Airline Act for the same purposes. The airlines also agree that state and local tax systems that provide property tax exemptions for other commercial and industrial taxpayers, but not interstate carriers, result in carriers bearing a disproportionate share of the state and local property tax burden and are discriminatory. Finally, the airlines agree with the Solicitor General that the anti-discrimination statutes must be interpreted to prevent this form of tax discrimination. Otherwise, as the Solicitor General observes, Congress' anti-discrimination mandates will be a "self-defeating scheme under which the States could discriminate . . . by the simple artifice of exempting all other types of property from the property tax base." (USA Bf. at 8)

2. Neither the Airline Act nor the Motor Carrier Act includes a "catch all" provision like subsection (1)(d) of the 4R Act, which is at issue here. *Compare* 49 U.S.C. §§ 1513(d)(1) and 11503a(b), with 11503(b). Congress could not have meant, however, that unlike the 4R Act, the Airline Act and the Motor Carrier Act would be self-defeating and ultimately hollow protections against discriminatory tax treatment. For this reason, the North Dakota Supreme Court held that the assessment ratio provisions of the Airline Act *do* protect interstate air carriers from the tax discrimination that results when other commercial and industrial property, but not air carrier property, is exempt from taxation. *Northwest Airlines, Inc. v. State Bd. of Equalization*, 358 N.W.2d 515 (N.D. 1984).[2]

[2] Because the assessment ratio provisions in the Motor Carrier Act are virtually identical to those in the Airline Act [*compare* 49 U.S.C. §§ 1513(d)(1)(A) and 11503a(b)(1)], under *Northwest Airlines* inter-

3. The meaning and scope of the assessment ratio provisions in the Airline and Motor Carrier Acts is not a question that is before the Court. These provisions, however, are nearly identical to the assessment ratio provisions in subsection (1)(a) of the 4R Act [49 U.S.C. § 11503(b)(1)], which the parties and the Solicitor General have *assumed* do not provide a means to deal with discriminatory tax exemption schemes. Because the question of relief under the assessment ratio provisions has not been squarely presented, and because neither of the class of carriers to whom that question matters the most—interstate air carriers and motor carriers—are before the Court, it should not decide the question either explicitly or implicitly on the record before it.

4. If the Court does reach this question, the parties' and Solicitor General's assumption that exemption discrimination cannot be addressed under the assessment ratio provisions of the interstate carrier acts is unfounded. Congress' purpose and objective in enacting all three anti-discrimination statutes, as well as the legislative history of these acts, demonstrate that Congress did not intend that state and local taxing authorities could shift the property tax burden to interstate carriers by the simple expedience of exempting other commercial and industrial taxpayers from taxation. Congress intended to exclude traditionally exempt property, such as government owned and church property, from the comparison class. It did not intend to extend an invitation to states to exclude significant portions of commercial and industrial property from the comparison class through a proliferation of newly created "exemptions," perpetuating the very tax inequity Congress sought to eradicate.

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state motor carriers are likewise protected against this kind of discriminatory tax practice.

ARGUMENT

I. Congress Enacted The 4R Act, Motor Carrier Act And Airline Act To Protect The National Interest In A Strong And Stable Network Of Interstate Commerce

A. Congress Was Required To Act Because Of Rampant Tax Discrimination Against Interstate Carriers By The States

The airlines need add little to the Solicitor General's discussion as to why Congress enacted the 4R Act and later, the Motor Carrier and Airline Acts. In its initial study of the problem, Congress soundly took state and local taxing authorities to task for imposing significantly higher property taxes on interstate carriers than they imposed on other businesses. S. Rep. No. 445, 87th Cong., 1st Sess. 458 (1961) ("Doyle Report"). This discriminatory practice was so widespread, Congress described state and local taxing authorities as having a "studied and deliberate practice" of assessing interstate carrier property at a proportionally higher value than other business property. S. Rep. No. 445, at 458. As the Senate Committee on Commerce subsequently observed, the carriers were "easy prey for State and local tax assessors" in that they "are nonvoting, often nonresident targets for local taxation" who cannot remove themselves from the locality. S. Rep. No. 630, 91st Cong., 1st Sess. 3 (1969).

Because of this discrimination, interstate carriers paid approximately $1 billion more than their fair share of state and local property taxes from 1960 to 1969. S. Rep. No. 1085, 92d Cong., 2d Sess. 3 (1972). More than a decade later, in 1975, Congress found that rail carriers alone were still over-taxed by at least $50 million each year. H.R. Rep. No. 725, 94th Cong., 1st Sess. 78 (1975).

To put an end to this exploitive taxation — after years of unheeded warnings — Congress took the extraordinary step of "assuming control" over the tax burden imposed on interstate carriers. S. Rep. No. 445, at 466. In 1976, Congress passed the 4R Act, prohibiting state and local taxing authorities from imposing discriminatory taxes on interstate rail carriers. Pub. L. No. 94-210, § 306, 90 Stat. 31, 54-55 (now codified at 49 U.S.C.

§ 11503). In 1980, it passed the Motor Carrier Act, prohibiting state and local taxing authorities from imposing a discriminatory tax burden on interstate motor carriers. Pub. L. No. 96-296, § 31, 94 Stat. 793, 823-24 (codified at 49 U.S.C. § 11503a). And, in 1982, Congress extended anti-discrimination protection to interstate air carriers through provisions of the Airport and Airway Improvement Act. Pub. L. No. 96-248, § 532(b), 96 Stat. 671, 701-02 (codified at 49 U.S.C. § 1513(d)). Because the three Acts are part of a comprehensive legislative scheme to accomplish the singular objective of fostering a sound network of interstate commerce, the extensive legislative history of the 4R Act is directly relevant to construing and applying the Motor Carrier and Airline Acts. *E.g., Western Air Lines*, 480 U.S. at 131.

B. "Exempting" Other Commercial And Industrial Property From Property Taxation Without Comparable Treatment Of Carrier Property Is Another Form Of Tax Discrimination Against Interstate Carriers

The airlines also agree with the Solicitor General that Congress meant to prevent "tax discrimination . . . in any form whatsoever" and that exempting other commercial and industrial property from taxation "is the most obvious form of tax discrimination" against interstate carriers. *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204, 210 (8th Cir. 1981); *see also Department of Revenue v. Trailer Train Co.*, 830 F.2d 1567, 1573 (11th Cir. 1987) (in enacting 4R Act "Congress possessed a general concern with discrimination in all its guises").

By giving favored tax status to resident commercial and industrial taxpayers, state and local taxing authorities can accomplish exactly the shift in the property tax burden Congress intended to eliminate. Carried to its logical conclusion, states could shift the entire property tax burden to interstate carriers by "exempting" all other commercial and industrial property from taxation. And in fact, some states have come close to doing just that with respect to the tax burden on personal property by exempting all or virtually all other commercial and industrial personal property from taxation and taxing only carrier personal property. *E.g.,*

Trailer Train Co. v. State Bd. of Equalization, 710 F.2d 468, 470 (8th Cir. 1983) (virtually all locally assessed personal property exempt from taxation); *Ogilvie*, 657 F.2d at 210 (all other commercial and industrial personal property exempt from taxation); *Northwest Airlines*, 358 N.W. 2d at 516 (virtually all other commercial and industrial personal property exempt from taxation).

This kind of discrimination adversely impacts rail, motor and air carriers, alike, and the threat that it poses to a broad and stable network of interstate commerce is as real today as when Congress passed legislation to stop it. It is no secret that many air carriers, for example, have filed or are on the verge of filing for bankruptcy. And a special task force created by President Clinton just concluded that interstate carriers are facing extraordinarily difficult financial times, that this is a matter of serious national concern, and that further federal action is needed to help return fiscal stability to this sector of the national transportation network. Nat'l Comm. to Ensure a Strong Competitive Airline Industry, Change, Challenge, and Competition, A Report to the President and Congress (August, 1993).

Personal property tax exemptions, which have become one of the most common forms of property tax exemptions, impact air carriers particularly hard. Unlike railroads, airlines do not own track, railroad yards or passenger terminals. Rather, their property is largely personal property, principally aircraft. Thus, when other commercial and industrial personal property is exempt from state and local property taxation, but airline property is not, the air carriers are effectively singled out and forced to carry a disparate share of the state and local personal property tax burden. That is patently discriminatory and exactly the kind of disproportionate taxation Congress intended to stop.

II. The Important Question Of Whether Relief From Discriminatory Exemption Schemes Is Proper Under The Assessment Ratio Provisions Of The Interstate Carrier Acts Has Not Been Presented Here, And The Court Should Not Decide It On this Record

Consistent with Congress' purpose in enacting the 4R Act, the courts have routinely granted relief to interstate rail carriers and

other related businesses like respondent carline companies, where state and local taxing authorities have "exempted" other commercial and industrial taxpayers, but not railroads, from property taxation. The courts have done so under subsection (1)(d) of the 4R Act, the "catch all" provision, which states in pertinent part that state and local taxing authorities may not "impose another tax that discriminates against a rail carrier . . ." 49 U.S.C. § 11503(b)(4); *e.g., Trailer Train Co. v. Levenberger*, 885 F.2d 415, 416-18 (8th Cir. 1988); *Trailer Train Co.*, 710 F.2d at 471-73; Ogilvie, 657 F.2d at 209-10.

The airlines take no position as to whether subsection (1)(d) of the 4R Act can be read to encompass relief from discriminatory exemption schemes. However, they do assert that regardless of whether this pernicious form of property tax discrimination can be redressed under the "catch all" provision in subsection (1)(d), it can be directly addressed in an assessment ratio analysis under subsection (1)(a).

The airlines address this question because the contrary assumption would probably mean that relief is not available under the assessment ratio provisions of the Airline and Motor Carrier Acts, since the assessment ratio provisions in all three statutes are virtually the same. 49 U.S.C. §§ 1513(d)(1)(A), 11503(b)(1), 11503a(b)(1). The Airline and Motor Carrier Acts, however, do not have a "catch all" provision like the 4R Act's subsection (1)(d). *Compare* 49 U.S.C. §§ 1513(d)(1) and 11503a(b), *with* 11503(b). Thus, an assumption that exempt commercial and industrial property is excluded from an assessment ratio comparison under subsection (1)(a) of the 4R Act necessarily implies that air and motor carriers can be discriminated against with impunity by the simple device of "exempting" other commercial and industrial taxpayers from taxation. Under that assumption, the Airline and Motor Carrier Acts would be, to use the Solicitor General's words, "illogical and self-defeating." (USA Bf. at 8)

That is an untenable construction of these Acts. But that is also a question that the Court need not and should not reach. As the Solicitor General has observed, the question of the interpretation and scope of the assessment ratio provisions of the 4R Act has never been raised by the parties, and the question has not been

presented to this Court as an issue for it to decide. (Pet. Bf. at 9-10; USA Bf. at 10 n.14) Accordingly, whatever the Court may hold with respect to subsection (1)(d) of the 4R Act, it should not decide on this record the weighty question of the proper interpretation and scope of the Act's assessment ratio provisions, particularly since neither of the carriers that question most directly impacts — air and motor carriers — are before the Court.

III. To Effectuate Congress' Purpose In Enacting Anti-Discrimination Legislation, Relief From Discriminatory Exemption Schemes Must Be Available Under The Assessment Ratio Provisions Of The 4R Act, The Motor Carrier Act And The Airline Act

Although the airlines urge the Court not to reach the question, they also touch on some of the arguments that bear on how that question should be decided in the event the Court considers it. The airlines do so because the parties and the Solicitor General are mistaken in their assumption as to the scope of the assessment ratio provisions in the 4R and other interstate carrier Acts.

Their assumption that discriminatory exemption practices cannot be redressed under the 4R Act's assessment ratio provisions is based on the Act's definition of "commercial and industrial property," which is the property to which interstate carrier property is to be compared in determining the extent of assessment ratio discrimination. "Commercial and industrial property" is defined in all three Acts as "property other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy." 49 U.S.C. §§ 1513(d)(2)(D), 11503(a)(4), 11503a(a)(4).

The Solicitor General and the parties assume that exempt property is not "subject to a property tax levy" and conclude that the disparity in the tax burden caused by exempting other commercial and industrial property from taxation is therefore not covered by the 4R Act's assessment ratio provisions. (Pet. Bf. at 26; USA Bf. at 5 n.10) While Oregon claims that this conclusively demonstrates that Congress placed no limits on the states' ability to shift the property tax burden to interstate carriers

through exemptions, the Solicitor General maintains that this demonstrates why relief must be available under the 4R Act's "catch all" provision.

Yet, the justification the Solicitor General offers in urging that relief from discriminatory exemption practices must be available under subsection (1)(d) is the very reason why such relief must be available under the assessment ratio provisions of the Airline Act and Motor Carrier Act. As the Solicitor General correctly points out, if state and local taxing authorities have an unfettered license to exclude any and all commercial and industrial property from the comparison class through "exemptions," as Oregon claims to have a right to do, they can effectively shift a disproportionate share of the state and local property tax burden back onto interstate carriers. This, of course, would wholly defeat Congress' purpose in enacting anti-discrimination legislation. By the same token, Congress could not have intended that *only* the 4R Act provides meaningful protection against discriminatory tax practices and that the other two anti-discrimination statutes it passed to protect the national interest in a sound network of interstate commerce, the Airline and Motor Carrier Acts, are meaningless.

As shown below, the plain meaning of the statutory language is not what the parties and the Solicitor General assume it to be. The more plausible construction — and the one compelled by Congress' purpose in enacting the legislation and by the legislative history — is that "subject to a property tax levy" refers to all property that is within the jurisdiction of a taxing authority that can be taxed, and not just the property that a taxing authority chooses to tax at a particular time. But even if the statutory language is given the meaning the parties have suggested, its import must be limited in scope, and the language cannot be read to lead to the absurd result that inheres in their interpretation of it.

A. Congress Did Not Intend To Give States A License To Perpetuate Discrimination Against Air And Motor Carriers By Excluding From The Comparison Class Whatever Local Commercial And Industrial Property They Wish To Favor

The parties and the Solicitor General have simply assumed without analysis that the phrase "subject to a property tax levy" is free from doubt and necessarily means property that "is taxed." But "subject to" has numerous meanings, including being "under the jurisdiction of." *E.g., The Random House Dictionary of the English Language*, Second Edition (unabridged) (1987). While property may be under the jurisdiction of the states and within their taxing power, they may for any number of reasons elect not to exercise that power. The property nevertheless remains "subject to" levy. Indeed, "subject to" more typically connotes the potential for an occurrence, *i.e.*, the Florida coast is "subject to" hurricanes, than it does the actual occurrence. *Id.* Thus, if Congress had meant only commercial and industrial property that in fact "is taxed," it would have said so.[3]

Moreover, as this Court has noted, "[t]he notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification." *FBI v. Abramson*, 456 U.S. 615, 625 and n.7 (1982), quoting *United States v. Monia*, 317 U.S. 424, 431 (1943) (Franfurter, J., dissenting). When viewed in context and in light of the legislative history, it is apparent that

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[3]Amici National Conference of State Legislatures, *et al.*, also recognize that the phrase "subject to a property tax levy" can mean a potential for taxation rather than property that is actually taxed. (NCSL Bf. at 11-12). While they argue that the inclusion of the article "a" and the word "levy" indicate that Congress meant only commercial and industrial property that "is taxed," these are distinctions without a difference. The operative language is *"subject to,"* which connotes merely a potential for the assessment and collection of tax. Indeed, while amici note that Congress used the term "levy" elsewhere in the statute in conjunction with "collect" [49 U.S.C. § 11503(b)(2)], Congress did not preface its use of the term in that context with the phrase "subject to" as it did in defining "commercial and industrial" property [49 U.S.C. § 11503(a)(4)].

the phrase "subject to a property tax levy" cannot be read, as the parties assume, as meaning only that commercial and industrial property that is actually taxed at a particular time.

The "subject to" property tax levy language was first proposed in the "Doyle Report," the initial comprehensive report on the nature and extent of tax discrimination against interstate carriers. S. Rep. No. 445, at 465-66. That report also discussed what kinds of property had traditionally been exempt from taxation, such as that owned by federal, state and local governments, municipally owned utilities and fraternal societies. S. Rep. No. 445, at 452. These kinds of property have historically never been "subject to" tax. Indeed, in some instances such as federally owned property, the states are constitutionally prohibited from taxing it. *Id.*

This understanding of what property was "exempt" and excluded from the comparison class was underscored in the Senate Commerce Committee's subsequent report, where the Committee explained that the statutory language was "not intended to interfere [with] or restrict State action in extending total or partial exemption to property of a class, such as churches, charitable institutions, homesteads, and the like." S. Rep. No. 1483, 90th Cong., 2d Sess. 11 (1968). This view was repeated verbatim in yet a later report. S. Rep. No. 630, at 11. No analysis or report on the legislation ever departed from this understanding as to the kinds of exempt property that could be excluded from the comparison class without defeating Congress' objective to equalize the tax burden between other commercial and industrial taxpayers and interstate carriers.[4]

[4] The Solicitor General is therefore mistaken in suggesting that the "subject to a property tax levy" language was added in response to lobbying by the states to exclude all "exempt" commercial and industrial property from the comparison class. (USA Bf. at 20 n.24) As discussed above, this language appeared in the very first proposals set forth in the Doyle Report. The hearings to which the Solicitor General cites merely reflect the states' unrelenting—and ultimately unsuccessful [*see* discussion, *infra*, at 13]—efforts to convince Congress to allow them to "classify" real and personal property however they deemed fit and to tax each "classification" differently without taking such differences into account in their treatment of interstate carrier property. *E.g.*,

That Congress did not intend that states be able to shift the property tax burden by "exempting" whatever local commercial and industrial property they wanted to exclude from the comparison class, is further confirmed by Congress' refusal to accede to the states' demands that they be allowed to narrow the comparison class by "classifying" property and taxing each class differently. "Exempting" property from taxation altogether is simply the most extreme form of "classification."

The debate between Congress and the states over how much "classification" could occur went on for years. *E.g.*, S. Rep. No. 1483, at 5, 10-11; S. Rep. No. 630, at 11, 23-24; S. Rep. No. 1085, at 7. The states insisted that they had a sovereign right to segregate and treat various kinds of property differently and that they did not need to account for that difference in their taxation of interstate carrier property. *E.g.*,, S. Rep. No. 630, at 8; *and see* Hearings cited, *supra*, at 12 n.3.

Congress disagreed and made only three adjustments to the comparison class. First, it recognized that real and personal property have historically been taxed differently, and it expressly approved of that limited "classification." *E.g.*, S. Rep. No. 1483, at 10-11. Second, it adopted the recommendation of the Secretary of Transportation that the phrase "commercial and industrial"

4 Hearings on S. 927 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 90th Cong., 1st Sess. 116 (1967) (letter from Oregon Tax Commission objecting that "each scheme of enforced uniformity at the federal level runs into the [states'] classification of property for ad valorem tax purposes"); 6 Hearings on S. 2289 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess. (1969) (resolution and report of Western States Association of Tax Administrators opposing federal legislation because of "untenable impact" on states' "right to classify property"); 9 Hearings on H.R. 16245, 16251, 16316, 16357, 16411, 16639 and S. 2289 Before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 899-90 (1970) (statement by California State Board of Equalization opposing federal legislation because it "actually interfere[s] with the proper classification of property by a State").

property be added to clarify that the comparison class did not include residential property. The Secretary observed that this addition would "permit the States to continue a *measure of classification*, if State law so permits, for differentially assessing property *unrelated to business or commercial use*." S. Rep. No. 630 at 24 (emphasis added).[5] Third, Congress expressly excluded agricultural and timber growing property from the definition of "commercial and industrial" property. *E.g.*, S. Rep. No. 1085, at 6-7.[6] Beyond that, it rejected every other effort — and there were many — to further limit the comparison class. *E.g.*, S. Rep. No. 595, 94th Cong., 2d Sess. 166 (1976) (conference committee rejecting proposed amendment that would have made legislation

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[5] The Secretary made no suggestion that substituting the phrase "commercial and industrial" property in place of the phrase "all other" property then in the legislation, would make the phase "subject to a property tax levy" redundant. Nor does it. Traditionally exempt property is frequently put to a use that is "commercial." Examples abound. A perfect one is the state owned liquor stores in Oregon. Government owned property has always been treated as tax exempt, but liquor sales are plainly commercial in nature. Likewise, charitable institutions frequently undertake "commercial" endeavors to generate revenue. Again, Oregon provides a ready example. The state taxing authorities challenged the Oregon YMCA's tax exempt status on the ground it was engaged in a "commercial" enterprise. After multiple rounds of litigation, the YMCA finally emerged with its exempt status intact. *Young Men's Christian Ass'n of Columbia-Williamette v. Department of Revenue*, 784 P.2d 1086 (Or. 1989); *In the Matter of the Appeal of YMCA Colombia-Williamette*, No. 90-1523 (Or. Dept. Revenue, March 23, 1992). Therefore, defining the comparison class as property put to a "commercial or industrial" use does not exclude all property that has been traditionally exempt from taxation.

[6] This was done, moreover, in the wake of complaints by the states that the proposed legislation would allow the railroads to benefit from widely used "green belt" tax preferences that included reduced rates and exemptions for agricultural and forest property. *E.g.*, 4 Hearings on S. 927, at 116, 119; 6 Hearings on S. 2289, at 86, 99-100. Had Congress meant to allow the exclusion of any other state favored commercial and industrial property, it would have said so.

inapplicable to any state having a constitutional provision allowing for "reasonable classification for state purposes").

Thus, what is evident from the entire legislative history is that Congress repeatedly *rejected* the states' efforts to narrow the comparison class by selectively removing whatever locally owned commercial and industrial property they wanted to favor. While Congress intended to exclude traditionally exempt property from the comparison class and to allow real and personal commercial and industrial property to be taxed differently, it plainly did *not* intend to allow the states to circumvent its anti-discrimination mandates through a proliferation of non-traditional "exemptions" or "classifications" of commercial and industrial property.

Oregon asserts, however, that other "legislative history" supports its contention that Congress meant to give states free rein to "exempt" any and all commercial and industrial property from the comparison class. This claim is based on statements made during floor debates by individual congressmen. (Pet. Bf. at 21) This Court has observed on more than one occasion that such individual political interplay is not a fair or accurate depiction of what Congress meant as a whole when it employed specific statutory language. *Garcia v. United States*, 469 U.S. 70, 76 (1984); *Weinberger v. Rossi*, 456 U.S. 25, 35 (1982). Rather, Congress' collective intent is most accurately reflected in the committee reports digesting and analyzing the proposed legislation. *Garcia*, 469 U.S. at 76; *Zuber v. Allen*, 396 U.S. 168, 186 (1969). Here, the committee reports repeatedly reflect that Congress did *not* intend to give states the right to exclude whatever commercial and industrial property they might be inclined to favor, to the corresponding detriment of interstate carriers.

Furthermore, the floor debates cited by Oregon had nothing to do with the assessment ratio provisions in the proposed legislation or the definition of "commercial and industrial" property, but rather, concerned the last minute addition of the "catch all" provision in subdivision (1)(d). 120 Cong. Rec. H-38, 373-74 (daily ed., Dec. 10, 1974) The question raised on the floor was whether *subdivision (1)(d)* would prevent states from granting exemptions or ban all tax preferences. *Id.* As sponsors of the 4R

Act explained, not even subdivision (1)(d) *prohibits* any such exemption practices. *Id.* States are free to exempt whatever property they want. But they cannot discriminate against interstate carriers when they do so and cannot single carriers out and demand that they pay property taxes when other local commercial and industrial taxpayers do not. *See* 120 Cong. Rec. H-38,756 (daily ed., Dec. 10, 1974).

B. The Statutes Cannot Be Read To Lead To An Absurd Result And To Defeat Congress' Purpose In Enacting The Airline And Motor Carrier Acts

This Court has also repeatedly stated that " '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.' " *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987), quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986). While the plain language of a statute is the starting point in this inquiry, " 'it is a familiar rule, that a thing may be within the letter of the statute and yet not within its spirit, nor within the intention of the makers.' " *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975), quoting *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892). In short, the Court will not read a statute so as to "lead to absurd results." *Haggar Co. v. Helvering*, 308 U.S. 389, 394 (1939).

These time-honored and universal rules are directly applicable here, as the North Dakota Supreme Court recognized in *Northwest Airlines*, 358 N.W. 2d at 515. The North Dakota Court concluded that exempt commercial and industrial property must be a part of the assessment ratio analysis under the Airline Act in order to implement the "clearly stated legislative purpose to prohibit states from imposing discriminatory taxes on air carriers . . . ." *Id.* at 516. The Court rejected the simple — and simplistic — argument by the state that exempt property was not "subject to a property tax levy," stating that:

> The construction urged by the state would allow discriminatory taxation of [airline] property as long as a state imposed no tax at all on other commercial and industrial property. We cannot reasonably so construe the statute . . . [W]e cannot assume that a law which completely exempts all property . . . except airline property . . . was not meant to be covered by the Act. Interpreting . . . § 1513(d) as the State would have us do would permit greater discrimination when the property is completely exempt than when it is taxed, but at a lower rate. That is unreasonable. *Id.* at 517.

Indeed, such a result leads to a " 'palpable absurdity' " as Justice Henderson recognized in his dissent in *Western Air Lines, Inc. v. Hughes County*, 372 N.W. 2d 106 (S.D. 1985), *aff'd on other grounds, Western Airlines*, 480 U.S. at 123, where the South Dakota Supreme Court reached the opposite conclusion. After noting probable jurisdiction of an appeal by the carrier in that case, this Court did not reach the exemption question because it found the tax in dispute was a permissible "in lieu tax" under section 1513(d)(3). *Western Air Lines*, 480 U.S. at 129, 131-34. In his concurring opinion, however, Justice White stated that he thought the Court's "in lieu" disposition was unwarranted and the Court should have reached "the plainly improvident ground on which the South Dakota Supreme Court sustained the tax." *Id.* at 135 (White, J., concurring).

Thus, whether one looks at the plain language of the assessment ratio provisions of the three interstate carrier Acts, examines Congress' purpose in enacting them and their legislative history, or contemplates the absurd results that would follow if they do not reach the assessment ratio discrimination that occurs when states "exempt" other commercial and industrial taxpayers but not interstate carriers from property taxation, the result is the same. The only construction that accomplishes Congress' objective to equalize the tax burden on interstate carriers and other commercial and industrial taxpayers is one that limits the commercial and industrial property excluded from the comparison class to traditionally exempt property "such as churches, charitable institutions, homesteads, and the like." S. Rep. No. 1483, at 11. Otherwise, the anti-discrimination provisions of the Airline and Motor Carrier Acts can and will be readily defeated as states continue to move to "exempt" the commercial and industrial property of local businesses that they believe, from their parochial perspective, are more deserving than interstate carriers of a

lessened tax burden. That, however, is the very disparity in tax treatment that Congress intended to eliminate in order to protect the *national* interest in a strong and viable system of interstate commerce.

CONCLUSION

The airlines ask that in interpreting the "catch all" provision of the 4R Act, this Court be sensitive to their concerns about the scope and meaning of the Airline Act. States should not be permitted to defeat Congress' purpose in passing that Act and the Motor Carrier Act as well, by discriminating against the carriers through the artifice of "exempting" the commercial and industrial property of favored local businesses.

Respectfully submitted.

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